

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-2037-MA-2015 (O&M)

Date of decision : 15.05.2017

Darshan Kumar

...Applicant-Appellant

Versus

Jeonjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: None for the applicant-appellant.

JITENDRA CHAUHAN, J. (Oral)

This special leave to appeal has been filed against the judgment dated 04.09.2015, passed by learned Sub Divisional Judicial Magistrate, Budhlada, whereby, the accused-respondent was acquitted of the charges framed against him under Section 138 of Negotiable Instrument Act, 1881 (for short 'the Act').

It has been averred in the present special leave to appeal that the respondent used to sell his crops through applicant-appellant's firm and used to raise loan from him on various occasions. Therefore, a sum of Rs.2,75,330/- stood outstanding against the respondent. Towards the discharge of said liability, the respondent issued cheque Ex.C1 in favour of the applicant-appellant. However, on the presentation of the same, it was dishonored by the bank with the remarks 'Insufficient Funds'. It is asserted

that the applicant-appellant has proved all the material ingredients to constitute an offence under Section 138 of the Act against the respondent.

Perused.

Admittedly, the applicant-appellant had advanced the loan to the respondent to earn profit by way of interest from him as had been advanced to 20 others such farmers with the same motive. It is further admitted that he maintained account books of these transactions without obtaining the requisite licence for the purpose. In the instant case, the advancement of loan to the respondent is solely for earning the profit which is clearly reflected from the admission of the applicant-appellant. Through the account books of the applicant-appellant, it emerges that he had been advancing loan to various persons as a matter of routine and reducing the same in writing. These facts categorically prove that the applicant-appellant is a money lender and being an unregistered money lender, the liability cannot be termed as legally recoverable debt.

In Chandrappa and Ors. v. State of Karnataka, 2007 (4) SCC 415, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal were culled out:

“(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) *Various expressions, such as, "abstantial and compelling reasons," "god and sufficient grounds", "vey strong circumstances", "distorted conclusions", "glaining mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "florishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

Keeping in view the above, the finding of acquittal recorded by the trial Court cannot be said to be perverse or contrary to the material on record. In fact there is no infirmity in the reasoning assigned by the trial Court for acquitting the respondent, this Court feels that learned Sub Divisional Judicial Magistrate, Budhlada, has passed the impugned judgment dated 04.09.2015, after appreciating the entire facts and circumstances of the present case and no other view is possible.

Accordingly, the present special leave to appeal is declined.

An application for condoning the delay of 38 days has also been filed along with the present leave to appeal.

On consideration, this Court feels that no satisfactory explanation is forthcoming to condone the delay, therefore appeal is dismissed on that score as well.

Dismissed on merits as well as being time barred as the delay has not been satisfactorilly explained.

15.05.2017
ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned:	Yes / No
Whether reportable:	Yes / No